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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sutter)

In re A.D. et al., Persons Coming Under the
Juvenile Court Law.

SUTTER COUNTY DEPARTMENT OF
HUMAN SERVICES,

Plaintiff and Respondent,

v.

L.B.,

Defendant and Appellant.

C075737

(Super. Ct. Nos. DPSQ106566,
DPSQ106567, DPSQ106568)

L.B., mother of the minors, appeals from orders of the juvenile court terminating her parental rights and freeing the minors for adoption. (Welf. & Inst. Code, §§ 366.26, 395¹.) In this, her second appeal involving the Indian Child Welfare Act (ICWA) (25

¹ Undesignated statutory references are to the Welfare and Institutions Code.

U.S.C. § 1901 et seq.), mother contends reversal is required because Sutter County Department of Human Services (Department) did not discharge its duty of inquiry because it did not inquire of relatives of mother and father for whom they had contact information about possible Indian heritage and did not make additional inquiry after mother provided further information at the section 366.26 hearing. Mother further contends the most recent notices did not include the correct surname of her paternal grandmother. Mother also argues the court erred by denying the Department's request to continue the matter to confirm the notice form was accurate and complete. We conclude the Department did conduct further inquiry after the section 366.26 hearing and included relevant information in the ICWA notices. As to the request for a continuance, the record shows no continuance was requested by the Department. Accordingly, we affirm the juvenile court's orders.

FACTS

In March 2010, the Department filed petitions to remove the three minors, A.D., age three; K.B., age two; and K.D., age seven months, from parental custody due to severe neglect. The juvenile court detained the minors and ordered reunification services for the parents. Both parents claimed Indian heritage and the Department sent notice of the proceedings to the Cherokee and Blackfeet tribes three times in 2010. These notices were virtually identical and included little ancestor information, in part, because father provided none.

The review report for the December 2011 review hearing stated father said his surname on his birth certificate was different from that on his Social Security card. Neither name was identified and it is not clear which, if either, of the names father was currently using. At the review hearing in December 2011, the juvenile court terminated mother's services but continued father's services and set a 24-month review hearing. At

the 24-month review hearing in April 2012, the court terminated father's services and set a selection and implementation hearing.

Mother filed a notice of appeal from the December 2011 ruling. In case No. C069972, mother challenged the adequacy of the ICWA notices on grounds the father's information on paternity status was incomplete, the notices did not identify the tribes in which father claimed membership, and the Department had failed to file the return receipts for the notices. This court ordered a limited remand to inquire of father about his Indian heritage and re-notice, if necessary, to include the relevant information.²

Although no stay of the juvenile court proceedings was sought either in this court or in the juvenile court, the juvenile court, believing it was necessary to do so, granted multiple continuances while the appeal was pending, from July 2012 to October 2013. During this period, two more ICWA notices were sent, one in August 2012 and another in August 2013, which added the names of some paternal relatives, the names of the tribes father had claimed, and facts supporting his paternity status.

On October 17, 2013, following issuance of the remittitur in case No. C069972, the court held a selection and implementation hearing. The Department informed the court it had complied with the directives in the opinion of this court in re-noticing the tribes to include additional information relating to father. However, mother had very recently indicated she might have additional information on her Indian heritage. The Department requested a continuance and asked that the mother be ordered to provide all information she had. The court directed mother to bring all her information and the names of everyone she contacted for information and continued the hearing for a week.

² The remittitur issued in October 2013.

At the continued hearing, the court questioned mother extensively about her genealogical information on both her maternal and paternal sides and where she got her information. Mother told the court she had talked to her father, her mother, two aunts, and a cousin to get the information for the court, and said other aunts, N. and Diane, knew more but she was unable to reach them. Mother gave the court her aunt Diane's telephone number. Mother told the court she had Indian heritage through both her mother and her father and had written down all the information she had. In response to the court's questions, mother provided information on her father, Douglas B., and her paternal grandfather, Edmond B. Mother believed her aunt Diane and her son, mother's cousin Nathan, may have received payments from an Indian tribe but she was unable to verify that information. Mother also had the name of Edmond B.'s wife, her paternal grandmother, Dorothy T., and initially identified Dorothy's parents as Lola and Clyde K. Mother said Nathan recently told her both Lola and Clyde K. were born and died on an Indian reservation and were buried on an Indian reservation in Oklahoma. Mother stated Dorothy had been married three or four times and her maiden name was E. Mother also recalled Dorothy T.'s stories from her childhood that Dorothy left her parents' home and stayed with the K's. but Dorothy's biological parents would come to pick her up. Dorothy was terrified because she did not want to go back home to live with her parents. Mother did not have any enrollment numbers, but believed her aunt, N., in Texas had that information and had tried to contact her by Facebook but was unsuccessful. Mother provided information on her mother, Edna R. and her maternal grandparents, E. Ra. (Ro.) and H. Ra. (Ro.). E.'s maiden name was A. Mother did not know who her maternal great-grandparents were. Noting Dorothy T.'s children had all been in foster care, mother provided the last names of those aunts and uncles. Mother said one of her aunts, Kathy G., had all of the family tree information but would not give it to her. After

securing all this information, the court asked mother if there was any other information she could supply. Mother responded there was nothing else until she could contact her two aunts. The court noted it was up to the parents to provide timely information for the ICWA notices and mother had over three years to do so. The court ordered a copy of the transcript to assist the Department in preparing the new notice. Mother was sworn and stated under penalty of perjury that all she had said about her family history was true and correct. Mother further stated she had gotten much of the information from Nathan, who knew all of her aunt Diane's family history. The court continued the hearing for 90 days and told mother if she got more information in the next two weeks to immediately provide it to the social worker.

The Department sent new ICWA notices to the tribes in November 2013. The notices contained all the names mother had provided including the aunts and uncles and Lola and Clyde K., who were identified as her paternal great-grandparents. The three known last names for the paternal grandmother, Dorothy T., were also listed as were spelling variants for E.A. and what appears to be the correct spelling of her and her husband's last name, Ro. The most recent report for the selection and implementation hearing stated the contents of the notice were based on the transcript of the October 24, 2013, hearing. The Department again filed the certified mail receipts but not the return receipts. However, each of the four noticed tribes responded that none of the three minors qualified as Indian children in that tribe.

At the selection and implementation hearing in January 2014, mother objected to termination of parental rights because mother's sister had done online research that indicated Lola K. was a full-blooded Cherokee Indian buried on Cherokee ground in Oklahoma. Counsel for the Department noted mother testified about all the ICWA information at the prior hearing. Counsel said the social worker who did the ICWA

notice was present in court and they were “double checking some information and I may have some more for the court as to why we can continue today.” The court saw Clyde and Lola K. were listed in the ICWA chart from the prior hearing and the Department’s counsel found the names were in the notices sent to the tribes. The court found the minors were not Indian children and terminated parental rights.

DISCUSSION

Mother raises several issues related to notice under the ICWA primarily regarding the degree of inquiry as it affected the accuracy of information in the notices sent in November 2013.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912.) The juvenile court and the Department have an affirmative duty to inquire at the outset of the proceedings whether a child who is subject to the proceedings is, or may be, an Indian child. (Cal. Rules of Court, rule 5.481(a).) If, after the petition is filed, the court “knows or has reason to know that an Indian child is involved,” notice of the pending proceeding and the right to intervene must be sent to the tribe. (25 U.S.C. § 1912; § 224.2; Cal. Rules of Court, rule 5.481(b).)

A.

Further Inquiry after the October 24, 2013, Hearing

Mother argues that, based on the information about her aunts, the likelihood they had further information, and their whereabouts that came to light in the October 24, 2013, hearing, the Department had a duty to make further inquiry regarding relatives and had been provided contact information to assist that inquiry.

The duty of inquiry is continuing and may include interviewing extended family members to gather information. (§ 224.3, subds. (a) & (c).) However, the Department is not required to conduct a comprehensive investigation into the minor's status and genealogy. (*In re C.Y.* (2012) 208 Cal.App.4th 34, 39; *In re S.B.* (2005) 130 Cal.App.4th 1148, 1161.)

The record shows the Department did conduct further inquiry after the hearing. In addition to the information provided by mother at the October 24, 2013, hearing, the notices included alternative forms of mother's paternal grandmother's name and a corrected spelling of the last name of her maternal grandparents. Clearly, the Department either received further information from mother after she contacted her sources or the Department was able to contact those sources and obtain the information to make these additions and corrections. There is no indication any further information was available from any source or that further reasonable inquiry would have produced any. No error has been shown.

B.

Father's Name and Ancestors

Mother asserts the information in the notice is flawed because it did not contain father's birth name as well as the name on his Social Security card and there was no information regarding his grandparents.

Information about father's multiple names was known prior to mother's first appeal and mother did not raise the issue at that time. Further, the record does not show whether the name he currently uses is his birth name or the one appearing on his Social Security card. Mother did not object to the absence of father's multiple surnames on remand and is foreclosed from raising the issue of father's name now. (*In re Z.W.* (2011) 194 Cal.App.4th 54, 64; *In re Amber F.* (2007) 150 Cal.App.4th 1152, 1156.) In any

case, father did not claim he was an enrolled member of a tribe. Thus, it was the ancestor's names, not his own, that might have appeared in tribal records and those names were provided. We conclude any error in failing to include father's multiple names is harmless. (*In re H.B.* (2008) 161 Cal.App.4th 115, 121-122; *In re Anointette S.* (2002) 104 Cal.App.4th 1401, 1411-1412.)

After mother's first appeal was filed, the Department made further inquiry and added both father's parents and a possible maternal grandparent in the August 20, 2012, ICWA notice. Following issuance of the remittitur, additional inquiry corrected the identification of father's maternal grandmother as being one of several maternal great-aunts instead. More than one inquiry by the Department produced the meager information that appears in the notice. It is not uncommon that parents do not have extensive information about their ancestors. Reasonable inquiry is all that is required and that was done here. Appellant points to no evidence whatsoever that further inquiry would have produced any other information than that appearing in the August 14, 2013, ICWA notice. There was no error.

C.

Lola and Clyde K.

Mother contends there should have been further inquiry regarding Lola and Clyde K. based on her sister's research and the K. name should have been listed as an alternate surname for Dorothy T. We disagree.

The information mother provided at the section 366.26 hearing was that her sister had found Lola and Clyde K. in an online search and Lola K. was a "full-blooded" Cherokee. Even if the information about Lola K. was accurate, it was immaterial. The evidence mother gave at the October 24, 2013, hearing made it clear that, while mother's paternal grandmother, Dorothy T., lived for a time with the K., they were not biologically

related and mother identified a different surname, E., as Dorothy's maiden name. As a result, K. was not listed as a possible surname for Dorothy T. However, their names had been included in the ICWA notices. Any connection between the K. and mother's ancestral line would have been disclosed during the tribes' investigation. Moreover, while mother objected to termination of parental rights, she did not request a continuance for further investigation of the previously disclosed names that were again introduced at the section 366.26 hearing. The juvenile court did not err in proceeding with the termination hearing.

D.

Request for Continuance

Mother contends the court erred in failing to grant the Department's request for continuance to review the facts about Clyde and Lola K. mother presented at the selection and implementation hearing in January 2014. Mother misperceives the state of the record.

The Department did request, and the court granted, a continuance at the October 17, 2013, hearing so that mother would have adequate time to bring all her documents and information regarding her heritage. However, at the selection and implementation hearing in January 2014, after mother objected to termination and brought up her sister's genealogical research, the Department's counsel told the court the social worker who prepared the notice was in court and double checking her records. Counsel's statement, read in context, represented that, as soon as the social worker did so, there might be more information to provide the court as to why they could continue with the scheduled hearing. Counsel was not asking to continue the hearing, counsel was asking for a momentary delay to provide information as to why no continuance was required. In fact, a few moments later, counsel found the names the sister had located on

the notices that had already been sent. Indeed, mother had previously testified to that information and stated she got the information from her cousin Nathan. No request to continue the hearing was made and the court had no reason to grant one. (§ 352.) There was no error.

DISPOSITION

The orders of the juvenile court are affirmed.

_____HOCH_____, J.

We concur:

_____RAYE_____, P. J.

_____NICHOLSON_____, J.